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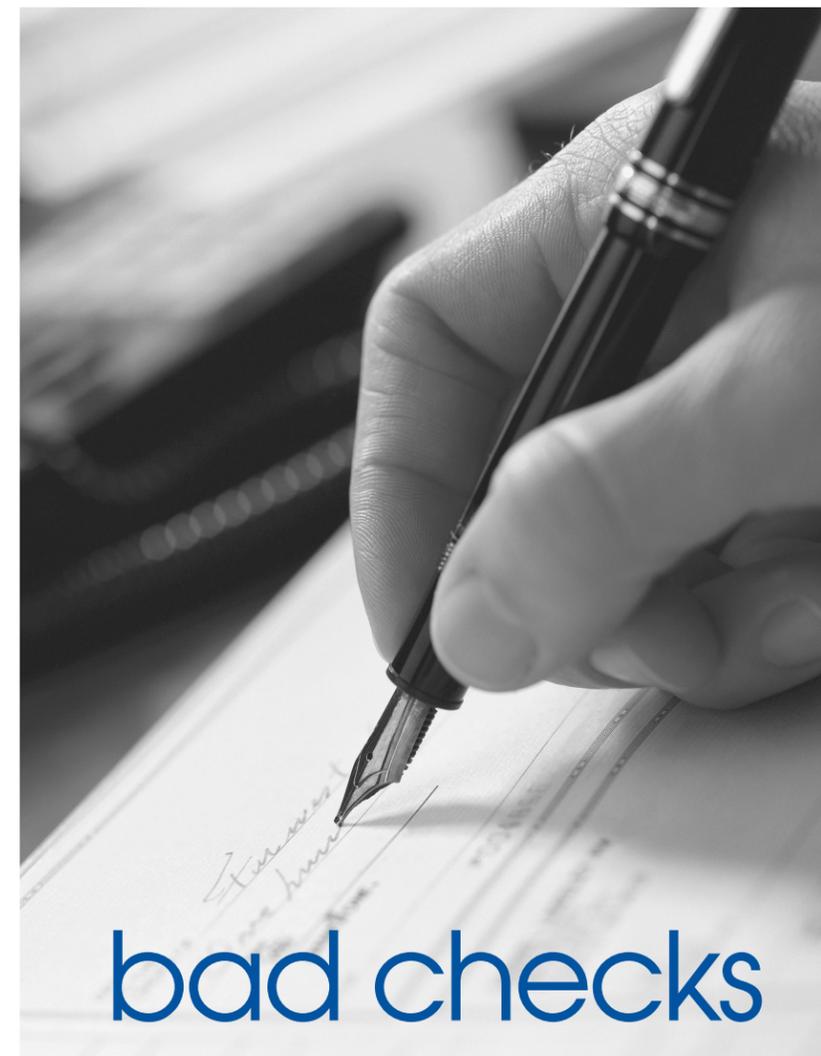
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what *you* can do to fight



••• COMPLIMENTS OF ASSEMBLYMEMBER GLORIA NEGRETE MCLEOD •••



BAD CHECK LAW
(ASSEMBLY BILL 522, CHAPTER 134, 1995 STATUTES)
(ASSEMBLY BILL 2643, CHAPTER 1000, 1996 STATUTES)

Any person who writes a check which is dishonored for lack of funds may be civilly liable and may be sued in Small Claims Court or any appropriate court for treble damages if a written demand for payment letter is mailed by certified mail and payment of the check, a service charge, and costs to mail the demand letter is not made within 30 days after the demand was mailed. A bad check writer can then be sued for three times the amount of the check, plus the face value of the check. There is, however, an exception for a stop payment placed on a check in order to resolve a good faith dispute which is described in more detail below.

CIVIL DAMAGES

The minimum amount of treble damages for issuing a bad check that a court may award is \$100. This means that if you receive a \$15 bad check, you can sue for \$115 (\$100 minimum treble damages + \$15 original check = \$115). The maximum amount of treble damages you may collect is \$1,500, so if you receive a \$500 bad check, you can sue for a total of \$2,000 (\$500 x 3 = \$1,500 treble damages + \$500 original check = \$2,000). If you receive a bad check for \$200, you can sue for a total of \$800 (\$200 x 3 = \$600 treble damages + \$200 original check = \$800). You may also be able to collect filing and service fees in some cases.

SERVICE CHARGE

A service charge can be applied to any bad check written, except for stop payments made by a customer in good faith. The service charge may not exceed \$25 for the first check passed and \$35 for each subsequent check. A person who writes a bad check has thirty days from the date a demand letter is mailed by certified mail to pay the amount of the check, the service charge, and the cost of mailing the demand letter.

If the customer fails to pay within thirty days, then he/she is liable for the amount of the check, minus any partial payments made within the thirty-day period, and a penalty equal to three times the amount of the check. However, the check writer is no longer liable for any service charges or the cost of mailing the demand letter.

GOOD FAITH DISPUTE

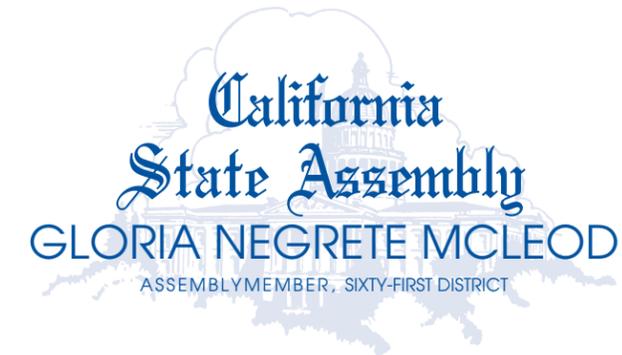
If a customer stops payment on a check in order to resolve a good faith dispute, the customer is not liable for any service charge, costs to mail the demand, or treble damages. This is also true for checks that are returned unpaid because of an error by a bank or other financial institution or because of a delay in the regularly scheduled transfer, or posting, of a direct deposit of a social security or government benefit assistance payment.

Grounds for a "good faith" dispute include services not rendered, goods not delivered, goods or services which were faulty, not as promised or otherwise unsatisfactory, or where the customer claims an overcharge. Such good faith disputes are usually decided by a judge.

In order to collect on a "good faith" stop payment dispute, you must send a specific demand letter by certified mail. (See attached copy of Civil Code 1719 for specific information.)

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Dear Friend:

As you know, a major problem for many small businesses is receiving bad checks. United States businesses lose approximately \$5 billion per year as a result of check fraud.

California's bad check law allows business owners to collect the amount of the check, plus damages equal to three times the amount of the check up to \$1,500. According to a number of studies, this law has had a major impact in reducing the number of bad checks written and, with continued publicity of the law, millions more dollars could be saved by small businesses.

To help you discourage this costly practice, I have enclosed information on the law and bad check signs to display prominently in your business.

I hope you find the material helpful. If you have any questions or would like additional assistance, please feel free to contact my office.

Sincerely,

GLORIA NEGRETE MCLEOD
Assemblymember, 61st District

IF A CHECK HAS BEEN DISHONORED, KNOW YOUR RIGHTS

- (1) Contact the writer of the check either in person, by telephone, or by letter. Notify the writer that the check has been returned and that you request immediate payment.
 - (2) If you fail to receive immediate payment, one of your options is to begin civil procedures to collect damages. In order to collect treble damages, you must mail a “demand” letter asking for payment. The letter must be sent by certified mail, with a return receipt requested and with a copy of California Civil Code 1719, which applies to the issuance of a bad check. The return receipt is an important piece of evidence and may be required by a judge as verification.
 - (3) If you haven’t received payment after 30 days from the date you mailed the demand letter, you can then file your claim for treble damages in Small Claims court (\$5,000 maximum)* or as a limited civil case in superior court (municipal court if your county still has a municipal court). You will be required to fill out some forms and pay a fee.
 - (4) You will be notified by the court of the date when your case will be heard. You should be prepared to present evidence in court proving your efforts to collect payment for the bad check.
- Take all documents related to the case with you to court, including the notice from the bank, notes of your conversations, copies of any correspondence with the check writer regarding your efforts to collect, and a copy of your demand letter with the return certified mail receipt.
- (5) A favorable judgment is good for 10 years. You can collect the money at any time during that period using legal collection procedures and other remedies available for any debt collection. You are entitled to recover three times the amount of the check up to \$1,500 in damages plus the amount of the check and court costs.

*In Small Claims there is no limit on the number of times a year you may sue to collect amounts from \$1 to \$2,500. You can sue only twice in one year for amounts from \$2,501 to \$5,000.

California Civil Code 1719

1719. (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars (\$35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars (\$100) nor more than one thousand five hundred dollars (\$1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to “pass a check on insufficient funds” means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a “good faith dispute” shall be determined by the trier of fact. A “good faith dispute” is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE

To: _____
(name of drawer)
_____ is the payee of a check you wrote
(name of payee)
for \$ _____. The check was not paid because
(amount)

you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty-five dollars (\$25) for the first check passed on insufficient funds and an amount not to exceed thirty-five (\$35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

(1) The amount of the check.

(2) Damages of at least one hundred dollars (\$100) or, if higher, three times the amount of the check up to one thousand five hundred dollars (\$1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost.

If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee.

You can contact the payee at:

(name of payee)

(street address)

(telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

(name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand which, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the court.

(f) A cause of action under this section may be brought by a holder of the check or an assignee of the payee. A proceeding under this section is a limited civil case. However, if the assignee is acting on behalf of the payee, for a flat fee or percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is the court, the written demand for payment described in subdivision (a) may be mailed to the drawer by the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j) (1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

IF YOUR CHECK BOUNCES...

you could be liable for three times the amount of the check (a minimum of \$100 and a maximum of \$1,500) - plus the face value of the check and court costs.

Bad check writers also face criminal penalties. (CALIFORNIA PENAL CODE 476 AND 476a)



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